

**THE STATE BANK OF
VIETNAM**

No: 06/2019/TT-NHNN

**SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom - Happiness**

Hanoi, June 26 2019

CIRCULAR

GUIDING THE FOREIGN EXCHANGE MANAGEMENT FOR THE FOREIGN DIRECT INVESTMENT IN VIETNAM

Pursuant to Law on the State Bank of Vietnam dated June 16 2010;

Pursuant to Law on credit institutions dated June 16 2010 and Law on amendments to some articles of Law on credit institutions dated November 20 2017;

Pursuant to Ordinance on the foreign exchange dated December 13, 2005 and the amended Ordinance on the foreign exchange dated March 18, 2013;

Pursuant to Decree No. 70/2014/ND-CP dated July 17 2014 detailing the implementation of some articles of Ordinance on the foreign exchange dated December 13, 2005 and the amended Ordinance on the foreign exchange dated March 18, 2013;

Pursuant to Decree No. 16/2017/ND-CP dated February 17 2017 by the Government defining the function, tasks, powers and organizational structure of the State Bank of Vietnam;

At the request of the Director General of Foreign Exchange Management Department;

The Governor of the State bank of Vietnam promulgates a Circular guiding the foreign exchange management for the foreign direct investment in Vietnam.

Chapter I.

GENERAL PROVISIONS

Article 1. Scope

1. This Circular provides instructions on the foreign exchange management for the foreign direct investment (FDI) in Vietnam, including capital contribution; opening and use of foreign currency and Vietnamese dong direct investment accounts; transfer of capital, profits and legal revenues to foreign countries; transmission of investments in the pre-investment stage and transfer of stakes, investment projects.

2. Issues regarding the foreign exchange management for FDI enterprises which are public companies whose securities are listed or registered for transactions on stock exchanges of

Vietnam shall be governed by regulations of foreign exchange management for foreign indirect investment in Vietnam.

Article 2. Regulated entities

This Circular applies to the following entities:

1. FDI enterprises in clause 2 Article 3 of this Circular.
2. Foreign investors, Vietnamese investors in FDI enterprises.
3. Foreign investors involving in a Business Cooperative contract (hereinafter referred to as BCC).
4. Foreign investors involving in a Public-Private Partnership contract (hereinafter referred to as PPP).
5. Organizations, individuals relating to foreign direct investment in Vietnam.

Article 3. Interpretation of terms

For the purpose of this Circular, these terms below can be construed as follow:

1. “Foreign investor” means any individual that has a foreign nationality or any organization that is established in accordance with a foreign country’s law and makes direct investment.
2. “FDI enterprises” means:
 - a) Any enterprise established in the form of investment of establishing a business organization whose members or shareholders are foreign investors and granted the investment registration certificate in accordance with law on investment.
 - b) Any enterprises other than those prescribed in point a of this clause and at least 51% of charter capital of which is owned by foreign investors as follows:
 - (i) Any enterprises (operating in conditional business lines or without conditions applicable to foreign investors) at least 51% of charter capital of which is held by foreign investors through contribution purchase of shares/stakes;
 - (ii) Enterprises derived from division, acquisition, consolidation whose 51% of charter capital is owned by foreign investors after such events.
 - (iii) New enterprises established in accordance with relevant laws;

c) Project enterprises established by foreign investors to implement PPP projects in accordance with law on investment.

3. “Authorized bank” consists of commercial banks, foreign banks' branches that are permitted for the foreign exchange business and supply of foreign exchange services as stipulated by laws.

4. “Authorized credit institution” consists of authorized banks, non-bank credit institutions that are permitted for the foreign exchange business and supply of foreign exchange services as stipulated by laws.

5. “Direct investment account” means foreign currency or Vietnamese dong demand accounts opened by FDI enterprises and foreign investors at authorized banks to perform transactions regarding the foreign direct investment in Vietnam under the regulations stated in Article 5, 6 and 7 of this Circular.

Article 4. General rules

1. Foreign and Vietnamese investors are allowed to contribute capital in foreign currencies and Vietnamese dong according to registered amount in the investment registration certificate, notice of the foreign investor’s eligibility to contribute capital or purchase shares/stakes, license of establishment and operation in accordance with specialized law, signing of PPP contracts with competent authorities and other documents which can prove the compliance with law of capital contribution of foreign investors.

2. Residents that are Vietnamese investors are allowed to contribute capital with their own sources of personal foreign currency.

3. The monetary capital contribution by foreign or Vietnamese investors must be transferred to the direct investment account.

4. Issues regarding foreign short-term, medium-term, long-term loans of FDI enterprises (transactions of fund withdrawal, payment of principle and interest, fees; foreign borrowing and debt repayment accounts) shall be governed by regulations of borrowing and debt repayment by enterprises.

5. The use of foreign investors’ distributable profit in the territory of Vietnam must comply with current regulations on the foreign exchange management and other related laws.

Chapter II.

SPECIFIC PROVISIONS

Article 5. Opening and using direct investment accounts

1. The following entities shall open and use direct investment accounts include:

a) Enterprises with foreign direct investment capital as prescribed in clause 2 Article 3 of this Circular.

b) Foreign investors participate in BCC or directly implement PPP projects without establishing project enterprises (hereinafter referred to as foreign investors directly implementing PPP projects);

2. An investor specified in clause 1 of this Circular shall open the direct investment account as follows:

a) Open a foreign currency account at one (01) authorized bank in order to receive and make payments in that currency during the process of foreign direct investment in Vietnam;

b) Only 01 (one) direct investment account may be opened for a foreign currency at one (01) authorized bank;

c) In case of investing in Vietnamese dong, the investor open one (01) direct investment account in Vietnamese dong at the authorized bank where the direct investment account in foreign currency is opened in order to receive and make payment in VND during the process of foreign direct investment in Vietnam;

d) In case the foreign investor participates in several BCCs or directly implements several PPP projects, such foreign investor shall open a direct investment account for each BCC or PPP project.

3. If the currency of an overseas loan is different from the currency of the FDI enterprise's direct investment account, it may open other direct investment accounts of the loan currency at authorized banks where they have already held direct investment accounts in order to perform their receipt and expenditure transactions regarding foreign loans in accordance with regulations of law on overseas loan receipt and repayment of enterprises;

4. In case the authorized bank is changed, the account holder prescribed in clause 1 of this Article shall:

a) Open another direct investment account at another authorized bank;

b) Transfer all the balance from old direct investment accounts into the new ones and close the former;

c) Direct investment accounts at other authorized banks shall only be used for performing receipts and expenditures transactions prescribed in Article 6,7 of this Circular after the process prescribed in point a,b of this clause is completed.

5. Procedures for the opening and closing of direct investment accounts must adhere to regulations of the State Bank of Vietnam (hereinafter referred to as the State Bank) on opening and using of demand accounts at payment service providers.

6. The enterprises prescribed in point b, c clause 2 Article 3 of this Circular shall close their direct investment accounts, and their non-resident foreign investors who hold shares/stakes at such enterprises shall open accounts of indirect investment for receipts and expenditures transactions in accordance with regulations on foreign exchange management of foreign indirect investment in Vietnam in the following cases;

a) After the transfer of shares, contributed capital or issuance of additional shares in order to raise the charter capital of an FDI enterprise, the rate of owned shares, contributed capital of foreign investors at such enterprise is below 51% ;

c) After stocks of the public company with FDI are listed or registered for transactions on securities market.

Article 6. Revenues and expenditures on direct investment accounts in foreign currencies

1. Revenues:

a) Direct capital contribution from the transfer of direct contributed capital in foreign currencies of Vietnamese, foreign investors of a FDI enterprise, foreign investors involving in BCC or directly implementing PPP projects;

b) Payment for the transfer of investment capital and investment projects in accordance with provisions in Article 10 of this Circular;

c) Transferred foreign currency purchased from authorized credit institutions to transfer capitals, profits and legal earnings overseas in accordance with regulations of this Circular;

d) Transfer from a foreign currency demand account opened at an authorized bank of the FDI enterprise, foreign investors involving in BCC or directly implementing PPP projects in order to transfer of capital, lawful revenues and profits to foreign countries;

dd) Revenue from foreign currency exchange for capital contribution in case of the currency used for contribution is different from the currency of the direct investment account;

e) Capital surplus from additional shares in order to raise the charter capital of the FDI enterprise;

f) Revenues in foreign currency from domestic sale of petroleum products (after fulfilling all financial obligations and subtracting expenses in Vietnam dong) in accordance with law on petroleum and Government Guarantee and Undertaking (if any);

g) Transferred revenues relating to foreign loans in foreign currencies of FDI enterprises in according with law on overseas loan receipt and repayment of enterprises, except for cases prescribed in clause 3 Article 5 of this Circular;

h) Other lawful revenues in Vietnamese dong relating to foreign direct investment in Vietnam.

2. Expenditures:

- a) Amounts transferred to foreign currency accounts opened at authorized banks of FDI enterprises, foreign investors involving in BCC or directly implementing PPP projects, project managers of petroleum projects according to laws on petroleum for foreign direct investment in Vietnam;
- b) Sale of foreign currency to authorized credit institutions which is then transferred into Vietnamese dong demand accounts opened at authorized banks of FDI enterprises, foreign investors involving in BCC or directly implementing PPP projects;
- c) Payments for transfer of investment capital, investment projects to overseas transferors or sale of foreign currencies for such transactions to transferors in Vietnam in Vietnamese dong in accordance with provisions prescribed in Article 10 of this Circular;
- d) Overseas transfer of profits and legal revenues in foreign currency from foreign investors' foreign direct investment in Vietnam;
- dd) Overseas transfer of investment capital in foreign currencies by foreign investors in case of capital reduction, finish, termination of investment projects, BCC, PPP contracts in accordance with law on investment;
- e) Payment for currency exchange to transfer overseas the capital, profits and legal revenues to in case of the currency used for transferring such items is different from the currency used to open the direct investment account;
- f) Transfers relating to foreign loans in foreign currencies of FDI enterprises in according with law on overseas loan receipt and repayment of enterprises, except for cases prescribed in clause 3 Article 5 of this Circular;
- g) Other lawful expenditures in Vietnamese dong relating to foreign direct investment in Vietnam.

Article 7. Revenues and expenditures transactions on direct investment accounts in Vietnamese dong

1. Revenues:

- a) Capital contribution in Vietnamese dong of Vietnamese, foreign investors of a FDI enterprise, foreign investors involving in BCC or directly implementing PPP projects;
- b) Payment for the ownership transfer of investment capital and investment projects in accordance with provisions in Article 10 of this Circular;

c) Distributable profits in Vietnamese dong of Vietnamese, foreign investors of a FDI enterprise, foreign investors involving in BCC or directly implementing PPP projects, project managers of petroleum projects in order to increase capital and expand investment activities in Vietnam;

d) Revenues from Vietnamese dong demand accounts opened at authorized banks of FDI enterprises, foreign investors involving in BCC or directly implementing PPP projects in order to transfer of invested capital, profits and legal receipts to foreign countries;

dd) Capital surplus from issuance of additional shares in order to raise the charter capital of FDI enterprises;

e) Other revenues relating to foreign loans in Vietnamese dong of FDI enterprises which are eligible to be granted overseas loans in Vietnamese dong according to current laws on overseas loan receipt and repayment of enterprises;

f) Other lawful revenues in Vietnamese dong relating to foreign direct investment in Vietnam.

2. Expenditures:

a) Amounts transferred to Vietnamese dong demand accounts opened at authorized banks of the same FDI enterprise, the foreign investors involving in BCC or directly implementing PPP projects, project managers of petroleum projects according to laws on petroleum for foreign direct investment in Vietnam ;

b) Payments for transfer of stakes and investment projects to transferors in Vietnam or payments for the purchase of foreign currencies for such transactions to overseas transferors in accordance with provisions prescribed in Article 10 of this Circular;

c) Payments for purchasing foreign currency at authorized credit institutions to transfer their capitals, profits and legal earnings overseas;

d) Transfer of direct investment in Vietnamese dong to Vietnamese investors or payments for purchasing foreign currencies to be transferred as direct investment to foreign investors in case of capital reduction, finish, termination of investment projects, BCC, PPP contracts in accordance with law on investment;

dd) Payments relating to foreign loans in Vietnamese dong of FDI enterprises which are eligible to be granted overseas loans in Vietnamese dong according to current laws on taking and repaying overseas loans;

e) Other lawful expenditures in Vietnamese dong relating to foreign direct investment in Vietnam.

Article 8. Transfer of capital for the pre-investment stage

1. Before obtaining the investment registration certificate, the notice of the foreign investor's eligibility to contribute capital or purchase shares/stakes, the license of establishment and operation in accordance with relevant law, signing of PPP contracts, foreign investors are allowed to transfer their investments from overseas or from their accounts in foreign currencies or Vietnamese dong opened at authorized banks to pay for legal expenditures in the pre-investment stage in Vietnam.

2. After obtaining the investment registration certificate, the notice of the foreign investor's eligibility to contribute capital or purchase shares/stakes, the license of establishment and operation, signing of PPP contracts, capital transferred to Vietnam in the pre-investment stage shall be:

a) Fully or partially converted into stakes;

b) Fully or partially converted into foreign loan capital of FDI enterprises. In cases of conversion into loan capital, FDI enterprises shall comply with regulations of law on enterprises taking and repaying foreign loans. The loan term begins on the date when the project is granted the investment registration certificate, license of establishment and operation in accordance with specialized law, conclusion of the PPP contract or the date on which parties sign the foreign loan agreement (whichever is later) to the repayment date;

c) Returned to foreign investors in foreign currencies or Vietnamese dong excluding legal expenditures on such stage in Vietnam.

3. In case the foreign investor is not granted the investment registration certificate, notice of the foreign investor's eligibility to contribute capital or purchase shares/stakes, license of establishment and operation, does not sign the PPP contract or decides to terminate their direct investment projects in Vietnam, the foreign investor may transfer overseas the rest of capital in foreign currencies or purchase foreign currencies to transfer overseas the capital and any interest after deducting relevant expenses incurred in the pre-investment stage.

4. The transactions prescribed in clause 1, 2 and 3 of this Article shall be carried out on the basis of mutual agreement between concerning parties, provisions of valid documents relating to the capital and other expenses incurred in the pre-investment stage in Vietnam and ensuring the compliance with law on foreign exchange management, investment, accounting and other related laws.

Article 9. Transfer of capital, profits and legal revenues to foreign countries

1. Foreign investors must transfer oversea the following amounts through direct investment accounts:

a) Direct investment capital that remains after capital reduction, project transfer (except for cases specified in point a clause 1 Article 10 of this Circular); completion, termination of investment projects, BCCs, PPP contracts in accordance with law on investment;

b) Principals, interests and expenses of foreign loans (except for cases prescribed in clause 3 Article 5 of this Circular), profits and lawful revenues related to foreign direct investment in Vietnam.

2. In case an FDI enterprise has to close its direct investment account due to its dissolution, termination or transfer of the ownership of investment project which results in the change in its legal status, the foreign investors have the right to use their foreign currency and Vietnamese dong accounts opened at authorized banks to purchase foreign currency and transfer their direct investments and lawful revenues overseas.

Article 10. Transfer of stakes and investment projects

1. The payment for the transfer of shares/stakes of FDI enterprises prescribed in clause 2 Article 3 of this Circular shall be made as follows:

a) Such payments between non-resident investors or resident investors shall not be made through direct investment accounts;

b) Such payments between a non-resident investor and a resident investor shall be made through direct investment accounts;

2. The payment for the transfer of the investment projects between investors in BCCs or investors who directly implement a PPP project shall be made as follows:

a) Such payments between investor who are non-residents or between a non-resident investor and a resident investor in a BCC shall be made through direct investment accounts;

b) Such payments between investors who are non-residents or between a non-resident investor and a resident investor who directly implement a PPP project shall be made through direct investment accounts;

3. The use of currencies in the valuation and payment for the ownership transfer of the value of capital, investment projects in foreign direct investment in Vietnam:

a) Foreign currencies may be used for valuation and payment for the transfer of stakes and investment projects between non-residents.

b) VND shall be used for valuation and payment for the transfer of stakes and investment projects between a resident and a non-resident or between residents.

Chapter III

RESPONSIBILITIES OF RELEVANT PARTIES

Article 11. Responsibilities of authorized credit institutions

1. Provide instructions for FDI enterprises and foreign investors in producing valid documents in accordance with current laws on foreign exchange management.
2. Open or close direct investment accounts at the request of FDI enterprises or foreign investors in accordance with regulation of this Circular.
3. Examine and store required records appropriate for transactions to ensure the provision of foreign exchange services for FDI enterprises and foreign investors is for the right purpose and in accordance with law.
4. Request FDI enterprises and foreign investors to provide documents related to foreign direct investment in Vietnam.
5. Sell foreign currency to foreign investors, FDI enterprises for their overseas transfer on the basis of the subject's foreign currency self-balance in accordance with lawsoft.
6. Confirm in writing at the request of account owners the balance, information of transactions of payment, direct investment accounts of FDI enterprises and foreign investors.

Article 12. Responsibilities of FDI enterprises and foreign investors

1. Comply with regulations on foreign direct investment in Vietnam prescribed in this Circular and other related laws.
2. Fully and honestly declare transactions related to foreign direct investment in Vietnam; provide documents related to foreign direct investment in Vietnam at the request of authorized credit institutions; take responsibility to law for the authenticity of documents provided to the authorized credit institutions.
3. Purchase foreign currency at authorized credit institutions to transfer their capitals, profits and legal earnings overseas in accordance with regulations of this Circular.
4. Return the payment for the ownership transfer of the value of capital and investment projects to foreign, Vietnamese investors in the cases that are specified in point b Article 10 of this Circular.
5. Report relevant issues at the request of the State Bank.

Chapter IV.

IMPLEMENTATION PROVISIONS

Article 13. Transitional provisions

1. Any enterprise and its non-resident foreign investors holding its shares/stakes shall convert their accounts in accordance with clause 2 and 3 of this Article.

2. In case of an enterprise whose foreign investors have opened and used indirect investment accounts to contribute, purchase shares/stakes that leads to such investors hold at least 51% and of its charter capital, such enterprise shall open a direct investment account in accordance with regulations of this Circular .

3. The following enterprises shall close their direct investment accounts, and their non-resident foreign investors holding their shares/stakes shall open accounts of indirect investment according to regulations of foreign exchange management:

a) Any enterprise whose foreign investors hold less than 51% of charter capital, except for those prescribed in point a clause 2 Article 3 of this Circular;

b) Any enterprise that does not need the investment registration certificate but has been granted one by the competent authority in accordance with the law on investment.

c) FDI enterprises whose stocks are listed or registered for transactions on stock exchanges.

d) In case an enterprise mentioned in point a, b, c of this clause is borrowing and repaying foreign debt through its direct investment account, it is allowed to continue using this account for purpose of borrowing and foreign debt repayment in accordance with regulations of law on foreign borrowing and debt repayment of enterprises.

4. During the process of account conversion, enterprises and non-resident foreign investors holding their shares/stakes may continue using their current investment accounts to perform receipt and expenditure transactions regarding investment activities in Vietnam.

Article 14. Entry in force

1. This Circular takes effect on September 06 2019. This Circular will replace the Circular No. 19/2014/TT-NHNN dated August 11 2014 by the Governor of the State Bank of Vietnam guiding the foreign exchange management for the foreign direct investment in Vietnam.

2. This Circular amends clause 1, 2 and 6 Article 5 of Circular No. 05/2014/TT-NHNN dated March 12 2014 by the Governor of the State Bank of Vietnam guiding the opening and use of indirect capital accounts for implementation of foreign indirect investment activities in Vietnam as follows:

1. Capital contribution, purchase or sale of shares or stakes of Vietnamese enterprises which are not yet to be listed or registered for transactions on stock exchanges of Vietnam and not in the cases specified in clause 2 Article 3 of Circular No. 06/2019/TT-NHNN dated July 26 2019 guiding the foreign exchange management for the foreign direct investment in Vietnam and other amended documents (if any).

2. Capital contribution, purchase or sale of shares or stakes of Vietnamese enterprises which have been listed or registered for transactions on stock exchanges of Vietnam.

“6. Capital contribution, transfer of stakes of foreign investors in securities investment funds and fund management enterprises according to legal provisions on securities.”

3. The following paragraph is added to point d clause 1 Article 3 of Circular No. 16/2014/TT-NHNN dated August 01 2014 by the Governor of the State Bank of Vietnam guiding the use of foreign currency and Vietnamese dong accounts for residents and non-residents at authorized banks (amended by Circular No. 49/2018/TT-NHNN dated November 31 2018 on term deposit):

“-Transferred revenue in foreign currency from direct investment accounts of foreign investors of petroleum projects.”

Article 15. Organizations of implementation

The Chief of Staff, the Director General of Foreign Exchange Management Department, Heads of relevant units affiliated with the State Bank, the Director of State Bank of centrally-affiliated cities and provinces, President of the Board of Directors, President of the Members Board, Chief Executive Officer (Director) of credit institutions and foreign banks' branches are responsible to implement this Circular.

**PP THE GOVERNOR
DEPUTY GOVERNOR**

Nguyen Thi Hong